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Cooperative Governance and Traditional Affairs, Department of

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GENERAL NOTICE

NOTICE 1568 OF 2009

DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

LOCAL GOVERNMENT: DISCIPLINARY CODE AND PROCEDURES FOR SENIOR MANAGERS

The Minister for Cooperative Governance and Traditional Affairs intends making the regulations as set out in the Schedule.

The regulations are hereby published for public comment in accordance with section 72 and 120 of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000).

Any person wishing to comment on the proposed regulations is invited to submit written comments to:

Attention: Mr J Maepa

The Director-General

Department of Cooperative Governance and Traditional Affairs

Private Bag X804

PRETORIA

0001

Comments may be faxed to 086 537 2337 or emailed to jackeym@cogta.gov.za or disciplinarycodeandprocedures@cogta.gov.za

Comments received after **31 January 2010** will not be considered.

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CHAPTER 1

INTERPRETATION

Definitions

1. (1) In these Regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, unless the context indicates otherwise –

- (a) **“days”** means working days;
- (b) **“employment contract”** means a contract contemplated in section 57 of the Act;
- (c) **“fellow employee”** means a staff member from the same municipality other than the senior manager charged with misconduct;
- (d) **“employing municipality”**, in relation to a senior manager, means the municipality employing the senior manager;
- (e) **“incapacity”** means lack of ability to perform any gainful employment due to congenital disability, illness (including mental), physical injury, old age, or intellectual deficiency.
- (f) **“mayor”** includes an executive mayor;
- (e) **“MEC”** means the Member of the Executive Council responsible for local government in the relevant province;
- (f) **“Minister”** refers to the Minister responsible for Cooperative Governance and Traditional Affairs
- (g) **“municipal council”** means the relevant Municipal Council, in its capacity as the employing municipality, as represented by the mayor or his or her delegate, as the case may be;
- (h) **“performance agreement”** means the agreement contemplated in section 57 of the Act;
- (i) **“senior manager”** means –
 - (i) a municipal manager; or
 - (ii) a manager referred to in section 56 of the Act
- (i) **“substandard performance”** means unacceptable or failing to meet the required standard or performing below an established standard; and

(j) **“the Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

(2) In these Regulations –

- (a) a word or expression which is a derivative or other grammatical form of a word or expression defined in subregulation (1), has a corresponding meaning unless the context indicates that another meaning is intended; and
- (b) a footnote may be taken into account in determining the meaning of a provision of these Regulations, but only as an opinion on the information it conveys.

CHAPTER 2

DISCIPLINARY CODE AND PROCEDURES

Purpose and application

- 2 (1) These regulations –
- (a) apply to all municipalities contemplated in section 155 of the Constitution and senior managers;
 - (b) do not apply to staff members falling within the scope of the disciplinary code and procedures concluded in the bargaining council designated for municipalities; and
 - (c) are intended to –
 - (i) establish a common and uniform code for the management of misconduct;
 - (ii) support constructive labour relations;
 - (iii) promote mutual respect between senior managers and council;
 - (iv) ensure a common understanding of misconduct and discipline;
 - (v) promote acceptable conduct;
 - (vi) provide an internal mechanism for quick and easy management of the disciplinary measures;
 - (vii) avert and correct unacceptable conduct;
 - (viii) prevent arbitrary or discriminatory actions by employing municipalities towards senior managers; and
 - (d) prevail in the event of any inconsistency with any systems and procedures adopted by a municipality in terms of section 67(1)(h) of the Act to the extent that those procedures apply to senior managers.

Principles

- 3 (1) These regulations are informed by the following principles:
- (a) discipline is fundamentally a corrective measure and not a punitive measure; and
 - (b) discipline must be applied in a prompt, fair, consistent and progressive manner.
- (2) *The Disciplinary Code and Procedures are necessary for the efficient delivery of service, and ensure that senior managers –*
- (a) have a fair hearing in a formal or informal setting;
 - (b) are timeously informed of allegations of misconduct made against them;
 - (c) receive written reasons for any adverse decisions taken; and
 - (d) have the right to appeal by lodging a dispute in terms of regulation 13 against any finding or sanction contemplated in regulation 5; and
- (3) A disciplinary hearing must –
- (a) take place in the area of jurisdiction of the municipal council;
 - (b) be understandable to all senior managers; and
 - (c) be concluded within the shortest possible time.

Policy

4 (1) In the event that a senior manager is accused of misconduct contemplated in Annexure A hereof, the employing municipality must institute disciplinary proceedings in accordance with this Code and Procedures.

(2) Discipline is to be effected fairly, consistently, progressively, promptly and with due regard to the Code of Conduct contained in Schedule 2 to the Act.

(3) The maintenance of discipline is the responsibility of the employing municipality.

(4) The principles of natural justice and fairness must be adhered to notwithstanding criminal or civil action having been instituted.

(5) Disciplinary procedures may not be dispensed with as a result of criminal, civil or other action having been instituted, or pending the outcome of such action.

(6) The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995 (Act No. 66 of 1995) insofar as it relates to discipline, constitutes part of this Code and Procedures.

(7) In dealing with misconduct, the employing municipality must assess the seriousness of the alleged misconduct by considering –

- (a) the extent to which the misconduct impacts on the work of the employing municipality or municipal entity or utility;
- (b) the nature of the senior manager's work and responsibilities; and
- (c) the circumstances in which the alleged misconduct took place.

Disciplinary actions**5. (1) Corrective counselling**

(a) In the event where the seriousness of the misconduct warrants counselling, the employing municipality of the senior manager must –

- (i) bring the alleged misconduct to the senior manager's attention;
- (ii) determine the reasons for the misconduct and give the senior manager an opportunity to respond to the allegations;
- (iii) decide on a method to remedy the conduct after consultation with the senior manager; and
- (iv) take steps to implement the agreed course of action.

(2) Verbal warnings

(a) In the event where the seriousness of the misconduct warrants a verbal warning, the employing municipality of the senior manager –

- (i) may give a verbal warning;
- (ii) must inform the senior manager that recurrence of same or related misconduct may result in more serious disciplinary action;

- (iii) must record the verbal warning and such warning remain valid for a period of six months.
- (b) If during the validity of the warning, the senior manager is subjected to disciplinary action on the same or related transgression, the warning may be taken into account in deciding an appropriate sanction.

(3) Written warnings

- (a) In the event where the seriousness of the misconduct warrants a written warning, the employing municipality may give the senior manager a written warning.
- (b) The following provisions apply to written warnings:
 - (i) The written warning may be given in the form of Annexure B of these Code and Procedures.
 - (ii) The employing municipality must give a copy of the written warning to the senior manager, who must acknowledge receipt thereof by signing it.
 - (iii) If the senior manager refuses to sign the written notice contemplated in subregulation (ii), the employing municipality must hand the warning to the senior manager in the presence of a fellow colleague, who shall sign as confirmation that the written warning was conveyed to the senior manager.
 - (iii) The written warning must be filed in the senior manager's personal file which remains valid for a period of six months.
 - (iv) If during the six-months period, the senior manager is –
 - (aa) subject to a disciplinary action on the same or related transgression, this written warning may be taken into account in deciding an appropriate sanction or
 - (bb) not accused of the same or related transgression, the written warning contemplated in subregulation (i) must be expunged from the senior manager's personal file and destroyed.

(4) Final written warning

- (a) In the event where the seriousness of the misconduct warrants a final written warning, the employing municipality may give the senior manager a final written warning.
- (b) The following provisions apply to final written warnings:
 - (i) The final written warning may be given in the form of Annexure C of these Code and Procedures.
 - (ii) The employing municipality must give a copy of the written warning to the senior manager, who must acknowledge receipt thereof by signing it.
 - (iii) If the senior manager refuses to sign the written notice contemplated in subregulation (ii), the employing municipality must hand the warning to the senior manager in the presence of a fellow colleague who shall sign as confirmation that the written warning was conveyed to the senior manager.
 - (iv) The written warning must be filed in the senior manager's personal file which remains valid for a period of six months.
 - (v) If during the six-months period, the senior manager is –

- (aa) accused of the same or related transgression, this written warning may be taken into account in deciding an appropriate sanction or
- (bb) not accused of the same or related transgression, the written warning contemplated in subregulation (i) must be expunged from the senior manager's personal file and destroyed.

Precautionary suspension

6. (1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council is of the reasonable opinion that –

- (a) the presence of the senior manager at the workplace may –
 - (i) jeopardise any investigation into the alleged misconduct;
 - (ii) endanger the well being or safety of any person or municipal property; or
 - (iii) be detrimental to stability in the municipality;
- (b) the senior manager may –
 - (i) interfere with potential witnesses; or
 - (ii) commit further acts of misconduct.

(2) Unless exceptional circumstances exist, a senior manager must be given an opportunity to make written representation to the municipal council on why he or she should not be suspended, within 24 hours of being notified of the council's intention to suspend him or her. The municipal council must consider any representations submitted to it by the senior manager within seven days.

(3) In exceptional circumstances contemplated in subregulation (2), the mayor may immediately, by written notice, suspend a senior manager with full pay, and on such further conditions as the mayor deems fit: Provided that –

- (a) the mayor must table a report on the suspension and the reasons thereof at a meeting of the municipal council, within seven (7) days of the suspension; and
- (b) the municipal council must ratify the suspension, failing which the suspension must be lifted with immediate effect.

(4) The municipal council must inform the –

- (a) relevant senior manager in writing of the reasons for his or her suspension, either at the time of the suspension, or within 24 hours thereafter; and
- (b) Minister and MEC for local government in the province of such suspension, or any extension of the period of such suspension and the reasons thereof within seven days after the suspension, or any extension of the period.

(5) If a senior manager is suspended, a disciplinary hearing must commence within 60 days after the date of suspension, failing which the suspension will automatically lapse, and the senior manager must immediately resume his or her duties.

Disciplinary procedures

7. (1) (a) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council, by way of a written complaint, which must be signed by the complainant.
- (b) An allegation referred to in paragraph (a) must be tabled by the mayor at the first meeting of the municipal council after the complaint was lodged, failing which the mayor has the right to request the Speaker to convene a special municipal council meeting within 14 days to consider the allegation.
- (c) If the municipal council is satisfied that there is prima facie cause to believe that an act of misconduct has been committed, it may resolve to institute disciplinary proceedings.
- (2) Any resolution taken under subregulation (1), must, if appropriate, include a resolution to –
- (a) appoint an independent investigator to investigate the allegations of misconduct; and
- (b) authorise the mayor to sign the letter appointing that investigator.
- (3) The investigator appointed in terms of subregulation (2), must, within a period of 30 days of his or her appointment, submit a report with recommendations to the municipal council.
- (4) The report contemplated in subregulation (3) must be tabled at the first meeting of the municipal council, failing which the mayor has the right to request the Speaker to convene a special municipal council meeting within 14 days to consider the report.
- (5) If a municipal council decides to institute disciplinary proceedings against a senior manager, it must do so by way of resolution, which resolution must also provide for –
- (a) the appointment of an independent and external presiding officer, who is preferably knowledgeable in local government, legal, administrative and financial matters, and authorisation for such presiding officer to make a finding on the allegations of misconduct, and, if applicable, to impose an appropriate sanction;
- (b) the appointment of a prosecutor within a period of seven days of the resolution; and
- (c) authorisation for a mayor to sign the letters of appointment.
- (6) The prosecutor must, within 14 days of his or her appointment, formulate charges of misconduct and serve the charge sheet and notice of hearing on the senior manager, in a format substantially compliant with Annexure D and E, which charge sheet must also inform the senior manager of –
- (a) the alleged act or acts of misconduct;
- (b) the time, date and venue at which the hearing will be conducted;

- (c) the name of the presiding officer and the prosecutor;
- (d) the address at which notices and correspondence may be served on the prosecutor;
- (e) the right to representation by a fellow employee or any other suitably qualified person;
- (f) the right to request further particulars or access to documentation or copies thereof from the prosecutor, in writing, within five days of receipt of the charge sheet;
- (g) the right to an interpreter, whose presence must be requested by notice in writing to the prosecutor within three days of receipt of the notice of hearing;
- (h) the right to call witnesses to testify on his or her behalf;
- (i) that any request for a postponement must be directed to the prosecutor, in writing, no later than three days after receipt of the charge sheet and no less than seven days before the date of the hearing; and
- (j) the fact that the hearing may be conducted in his or her absence, if the senior manager or his or her representative fails to attend, which includes a finding and the possible imposition of a suitable sanction.

(7) Nothing in this Code and Procedures detracts from a senior manager's right to utilise dispute-settlement mechanisms provided under the Labour Relations Act.

Notice of a disciplinary hearing

8. (1) The senior manager must be given written notice at least five working days before the date of the hearing.

(2) The written notice of the disciplinary hearing must be given in accordance with Annexure E attached to this Code and Procedures and must contain –

- (a) a description of the allegations of misconduct and the main evidence on which the employing municipality will rely;
- (b) details of the time, place and venue of the hearing;
- (c) when delivered by registered post, the date on which the letter was received by the senior manager as indicated by the post office;
- (d) information on the rights of the senior manager to representation by a fellow colleague or a suitably qualified person, if the presiding officer so directs; and
- (e) information on the rights of the senior manager to call witnesses at the hearing.

(3) (a) The senior manager must acknowledge receipt of the notice by signing a copy of the notice.

(b) If the senior manager refuses to sign the notice as acknowledgement of receipt of that notice, it must be given to the senior manager in the presence of a fellow colleague, who must sign in confirmation that the notice was conveyed to the senior manager.

Conducting a disciplinary hearing

9. (1) The disciplinary procedures must commence –
- (a) within 60 days of the resolution to institute disciplinary action; and
 - (b) on a date not less than five days and not more than 15 days after the notice contemplated in regulation 8 above.
- (2) The presiding officer, on good cause shown, may –
- (a) extend or reduce any period of time fixed by or under these regulations; or
 - (b) adjourn any hearing.
- (3) The hearing must be conducted by the presiding officer contemplated in regulation 7(5)(a), who may determine the procedure to be followed, provided that –
- (a) the rules of natural justice must be adhered to at all times;
 - (b) the presiding officer in discharging this obligation –
 - (i) must exercise care, diligence and act impartially; and
 - (ii) may not consult or confer with any of the parties or their representatives on the merits or demerits of the case,
- (4) The prosecutor must –
- (a) commence the disciplinary hearing;
 - (b) call witnesses and produce book(s), document(s) or object(s);
 - (c) cross-examine any witness called to testify on behalf of the senior manager;
 - (d) inspect any book(s), document(s) or object(s) produced by the senior manager; and
 - (e) present arguments on the merits of the case.
- (5) The senior manager has the right to –
- (a) be heard in person or through a representative;
 - (b) call witnesses and produce book(s), document(s) or object(s);
 - (c) cross-examine any witness called to testify by the prosecutor;
 - (d) inspect any book(s), document(s) or object(s) produced by the prosecutor; and
 - (e) present argument on the merits.
- (6) The presiding officer –
- (a) may, at any time during the hearing –
 - (i) question any party or its witnesses on any matter relevant to the charges;
 - (ii) proceed with the enquiry in the absence of a party who is in default;
 - (iii) make such interim determinations or rulings as he or she deems necessary; and
 - (b) must –
 - (i) after having considered the evidence before him or her, make a finding of fact;
 - (ii) in the event of a finding of guilty against the senior manager, invite and hear any plea in mitigation or aggravation of sanction prior to imposing a sanction; and
 - (iii) if applicable, impose an appropriate sanction.

- (7) The presiding officer must, by no later than 10 days after the last day of the hearing, provide the senior manager or his or her representative with—
- (a) written reasons for the finding of fact contemplated in subregulation 9(6)(b)(i); and
 - (b) a copy of the determination.

(8) For purposes of a disciplinary hearing contemplated in this Disciplinary Code and Procedures, both the employing municipality and the senior manager may be represented by a fellow employee or any suitably qualified person.

Recording

10. (1) The proceedings of the hearing must be recorded in writing and by means of a mechanical device.
- (2) Records of the proceedings contemplated in subregulation (1) must be kept in a safe custody by the municipal council and may only be disposed of in terms of the National Archives of South Africa Act, 1996 (Act 43 of 1996).
- (3) A copy may be provided to the senior manager on a written request.

Pre-dismissal arbitration

11. (1) A municipal council may, with the consent of the senior manager, request the Commission for Conciliation Mediation and Arbitration to conduct an arbitration in relation to allegations of misconduct or incapacity of senior manager as provided for under section 188A of the Labour Relations Act, 1995 (Act 66 of 1995).
- (2) The decision of the arbitrator appointed in terms of subregulation 1 shall be final and binding and only subject to review by the Labour Court.
- (3) The provisions of section 138 of the Labour Relations Act, read with the changes required by the context, apply to any pre-dismissal arbitration.

Sanctions

12. (1) The presiding officer may impose any, or a combination of any, of the following sanctions, with or without conditions:
- (a) a written warning;
 - (b) a final written warning;
 - (c) a fine not exceeding one month emoluments;
 - (d) suspension without pay not exceeding 3 month's remuneration; or
 - (e) a combination of any of the above sanctions; or
 - (f) dismissal.

- (2) The presiding officer must –
- (a) impose a sanction within 10 days of the completion of the hearing;
 - (b) advise the municipal council and the senior manager in writing of the sanction, in the event that no further hearing is convened;
 - (c) advise the senior manager of the right to lodge a dispute with the appeals committee within 30 days of the sanction being imposed;
 - (d) formally document the sanction in a format substantially compliant to these Code and Procedures (Annexure F), a copy of which must be handed to the senior manager; and
 - (e) submit a complete record of the hearing to the municipal council, within 10 days after imposing the sanction.

- (3) The employing municipality must –
- (a) implement the sanction imposed by the presiding officer, notwithstanding the appeal lodged with the appeals committee; and
 - (b) inform the Minister and MEC for local government in the province of the outcome of any disciplinary hearing within 14 days after the finalisation of such disciplinary hearing.

Appeals

13. (1) A senior manager may only appeal against the finding or resultant sanction or both, in instances of –

- (a) a fine not exceeding one month emoluments;
- (b) suspension without pay for a period not exceeding three months;
- (c) a combination of the above sanctions; or
- (d) dismissal.

(2) An appeal contemplated in subregulation 13(1) must be lodged in writing with the chairperson of the appeals committee within five days of notification of the disciplinary action.

(3) The appellant must provide details of the grounds for appeal, procedural irregularities if any, new evidence in support of the appeal or the reason and evidence why the sanction is considered too severe.

(4) The appeals committee shall comprise –

- (a) a suitable, independent and external chairperson;
- (b) two other suitably qualified members from outside the employing municipality, not involved in the disciplinary hearing process, preferably knowledgeable in legal, administrative, financial and local government matters.

(5) If the senior manager, on good cause, objects to any member of the appeals committee, the senior manager shall submit his or her objections in writing to the mayor at least 5 days before the appeal hearing.

(6) If the grounds are upheld, a suitable substitute shall be appointed to ensure the independence and integrity of the outcome of the hearing.

(7) If the senior manager fails to attend the hearing without due cause, the appeal shall be deemed to have lapsed.

(8) The appeals committee –

(a) shall –

(i) hear the appeals, provide an independent, fair, impartial, equitable, and timely resolution of appeals;

(ii) call witnesses and examine any documentation relevant to the appeal;

(iii) make its decision within ten days of receipt of the appeal;

(iv) inform the senior manager of its verdict in writing within 5 working days of the decision being taken;

(v) submit a complete record of the hearing to the municipal council, within 10 days of the decision being made; and

(b) may set aside, vary or confirm the penalty imposed by the presiding officer.

(9) The appellant has the right to appear before the appeals committee, be heard and to be accompanied by a fellow employee or any suitable person.

(10) The decision of the appeals committee is final and not subject to any administrative review.

(11) Notwithstanding the above, the appeals committee may dismiss an appeal if there is sufficient evidence to believe that the grounds for appeal lack substance and that a review of the sanction would not be justified.

(12) In lodging the dispute, the senior manager must comply with this Disciplinary Code and Procedures.

CHAPTER 3

PROCEDURES FOR DEALING WITH SUBSTANDARD PERFORMANCE**Purpose and application**

14. (1) The Procedures for dealing with substandard performance—
- (a) apply to all employing municipalities contemplated in section 155 of the Constitution and senior managers; and
 - (b) is intended to –
 - (i) assist the senior managers to overcome substandard or poor performance;
 - (ii) promote efficient and effective performance;
 - (iii) avert and correct inadequate performance;
 - (iv) ensure that the employing municipality and senior manager share a common understanding of incapacity;
 - (v) prevent arbitrary or discriminatory actions by the employer towards the senior manager;
 - (vi) give reasonable assistance to senior managers who are incapable of performing in accordance with the requirements of their jobs; and
 - (vi) promote mutual respect between senior managers and the employing municipality.

Policy, rules and standards

15. (1) If it is alleged that a senior manager is not capable of carrying out the duties attached to his or her post or incapable of carrying out those duties efficiently, the employing municipality must assess the capacity of the senior manager and may take action against the senior manager in accordance with these Code and Procedures.

(2) The Code of Good Practice contained in Schedule 8 to the Labour Relations Act, 1995 (Act No. 66 of 1995), insofar as it relates to incapacity, constitutes part of this Procedures, in respect of poor work performance.

(3) In applying these Procedures, the employing municipality must assess the incapacity of a senior manager by considering –

- (a) the extent to which the incapacity impacts on the work of the municipality, the senior manager's department, colleagues and local citizens and communities;
- (b) the extent to which the senior manager fails to meet the required performance standards established by the employing municipality;
- (c) the extent to which the senior manager lacks the necessary skills to perform in accordance with his or her performance agreement;
- (d) the nature of the senior manager's work and responsibilities; and
- (e) the circumstances of the senior manager.

Procedures for dealing with substandard performance

16. (1) These Code and Procedures must be read in conjunction with regulation 32 of the Municipal Performance Regulations.

(2) If the employing municipality is of the opinion that a senior manager is not performing in accordance with the requirements of the job that he or she has been employed to do, the employing municipality must –

- (a) furnish the senior manager with written reasons why it is necessary to initiate this procedure; and
- (b) after furnishing the written reasons referred to in subregulation (a), meet with the senior manager, and if the senior manager chooses, with his or her representative.

(3) In the meeting referred to in subregulation (1)(b), the employing municipality must –

- (a) explain the requirements, level, skills and nature of the job;
- (b) evaluate the senior manager's performance in relation to the performance agreement;
- (c) provide reasons for alleged substandard performance; and
- (d) afford the senior manager or his or her representative an opportunity to –
 - (i) confirm or deny the allegations referred to in subregulation (c); and
 - (ii) state reasons why he or she has not performed in accordance with the requirements of the performance agreement.

(4) After hearing the senior manager's position, the employing municipality must, if necessary –

- (a) develop and initiate a formal programme of counselling and training to enable the senior manager to reach the required standard of performance, which must include –
 - (i) assessing the time that it would take for the senior manager to overcome the poor work performance;
 - (ii) on the basis of the assessment referred to in subregulation (i), establish realistic timeframes within which the employing municipality will expect the senior manager to meet the required performance standards; and
 - (iii) identify and provide appropriate training for the senior manager to reach the standard of performance.
- (b) establish ways to address any factors that affect the senior manager's performance that lie beyond the control of the senior manager.

(5) If the senior manager –

- (a) after being subjected to a formal programme of counselling and training as contemplated in subregulation (4), fails to meet the required performance standard for the post, the employing municipality, after consultation with the senior manager, may –
 - (i) provide further training to the senior manager;
 - (ii) provide counselling to the senior manager; or

- (iii) terminate the employment contract of the senior manager.
- (b) fails or refuses to follow a formal programme of counselling and training contemplated in subregulation (3), the employing municipality may initiate disciplinary proceedings against the senior manager for misconduct.

CHAPTER 4**GENERAL****Transitional arrangements**

17. (1) Any disciplinary process instituted prior to the commencement of these regulations must –

(a) be finalised in terms of the Code and Procedures or any policies that prevailed at the time when the process was instituted; or

(b) by mutual agreement in writing between the senior manager and the municipal council, be finalised in terms of the Disciplinary Code contained in these regulations.

Repeal

18. These regulations repeal regulation 16 and 17 of the Municipal Performance Regulations for municipal managers and managers directly accountable to municipal managers.

Short title

19. These regulations are called the Local Government: Disciplinary Code and Procedures for Senior Managers.

ANNEXURE A

ACTS OF MISCONDUCT

A senior manager will be guilty of misconduct if he or she (this list is not exhaustive) –

1. fails to comply with or contravenes any Act, regulation, or legal obligation relating to local government and the employment relationship;
2. wilfully or negligently mismanages the finances of the municipality;
3. without permission possesses or wrongfully uses the property of the municipality or that of another staff member and/ or a visitor;
4. wilfully, intentionally or negligently damages and or causes loss of municipal property;
5. endangers the lives of self or others by disregarding safety rules or regulations;
6. prejudices the administration, discipline or efficiency of a municipality, office or institution of the municipality;
7. misuses his or her position in the municipality to promote or to prejudice the interest of any political party;
8. steals, bribes or commits fraud;
9. accepts any compensation in cash or otherwise from a member of the public or another staff member for performing his or her duties without written approval from the municipal council;
10. fails to carry out a lawful order or routine instruction without just or reasonable cause;
11. derelicts his or her duties, absents or repeatedly absents himself or herself from work without reason or prior permission;
12. commits an act of sexual harassment;
13. discriminates against others on the basis of race, gender, disability, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution;
14. performs below the required or established standard for reasons other than incapacity;
15. without written approval from his or her municipality, performs work for compensation in a private capacity for another person or organisation either during or outside working hours;
16. while on duty, is under the influence of intoxicating, illegal, unauthorised, habit-forming and/ or stupefying drug, including alcohol;
17. while on duty, conducts himself or herself in an improper, disgraceful and unacceptable manner;
18. contravenes the Code of Conduct for municipal staff members contained in schedule 2 of the Municipal Systems Act;
19. assaults, or attempts or threatens to assault, another staff member or person while on duty;
20. incites other municipal staff to unprocedural and unlawful conduct;

21. displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour;
22. intimidates or victimises fellow staff members;
23. prevents other staff members from belonging to any trade union or body;
24. operates any money lending scheme for employees for own benefit during working hours or from the premises of the municipality;
25. carries or keeps a firearm(s) or other dangerous weapon(s) on municipal premises, without the written authorisation of the employing municipality;
26. refuses to obey security regulations;
27. gives false statements or evidence in the execution of his or her duties;
28. impersonates another person or misrepresents his or her qualifications to gain employment at the municipality
29. falsifies records or any other documentation;
30. participates in unprocedural, unprotected and/or unlawful industrial action,
31. fails or refuses to follow a formal programme of counselling contemplated in regulation 5 of these Code and Procedures;
32. commits an act of dishonesty; or
33. commits a common law or statutory offence while on municipal premises.

ANNEXURE B

WRITTEN WARNING

Name of senior manager: _____

Address: _____

Pursuant to a meeting between yourself (hereinafter referred to as the senior manager) and the _____ (hereinafter referred to as the supervisor) held on _____ (date), you are hereby formally issued with a written warning in terms of regulation 5(3) of the Disciplinary Code of Procedures in consequent of the following act of misconduct committed by you:

Should you commit the same or related misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Mayor/ Municipal Manager Presiding Officer/_____
Date

Receipt of the abovementioned charge sheet acknowledged.

Senior Manager_____
Date_____
Witness (if applicable)_____
Date

ANNEXURE C

FINAL WRITTEN WARNING

Name of senior manager: _____

Address: _____

Pursuant to a meeting between yourself (hereinafter referred to as the senior manager) and the _____ (hereinafter referred to as the supervisor) held on _____ (date), you are hereby formally issued with a final written warning in terms of regulation 5(3) of the Disciplinary Code of Procedures in consequent of the following act of misconduct committed by you:

Should you commit the same or related misconduct, this written warning may be taken into account in determining a more serious sanction.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Mayor/ Municipal Manager/ Presiding Officer

Date

Receipt of the abovementioned charge sheet acknowledged.

Senior Manager

Date

Witness (if applicable)

Date

ANNEXURE D

CHARGE SHEET

In the disciplinary hearing of

_____ (Name of Municipality)

and

_____ (Name of senior manager)

You, _____, (hereinafter referred to as "the senior manger") of the _____ Municipality (hereinafter referred to as "the employing municipality"), are hereby charged with misconduct as follows:

Charge 1:

That you are guilty of misconduct by

In that:

You _____

Charge 2:

That you are guilty of misconduct by

In that:

You _____

Charge 3:

That you are guilty of misconduct by

In that:

You _____

Prosecutor

Date

Receipt of the abovementioned charge sheet acknowledged.

Senior Manager

Date

Witness (if applicable)

Date

ANNEXURE E

NOTICE OF DISCIPLINARY HEARING

In the disciplinary hearing of

_____ (Name of Municipality)

and

_____ (Name of senior manager)

1. You, _____ are hereby given notice to attend a disciplinary hearing in terms of regulation 6 of the Disciplinary Code and Procedures scheduled as follows:

Date: _____

Time: _____

Venue: _____ Municipality

Charges: refer to attached charge sheet (Annexure D)

2. Your attention is drawn to the following:
- (a) You have the right to be represented by a fellow employee or any other suitably qualified person, provided that any legal costs incurred will be borne by you.
 - (b) If you or your representative should fail to attend the hearing at the scheduled time and venue, the hearing may proceed in your absence.
 - (c) You will be required to plead to the charges set out against you in the charge sheet.
 - (d) The municipality will call witnesses and adduce evidence, orally or by way of documents, and you or your representative will have the right to cross-examine the witnesses called on behalf of the municipality, subject to the rights of any such witnesses.
 - (e) You have the right to present your case and to call witnesses and adduce evidence, orally or by way of documents.
 - (f) The proceedings will be conducted in English, and should you require an interpreter, you must inform the prosecutor in writing thereof, within 3 days of the date of receipt hereof.

- (g) Your attention is specifically drawn to the fact that the municipal council has appointed _____, to act as the prosecutor and _____ to act as the presiding officer in the hearing.
- (h) Any request for further particulars or access to documentation or copies thereof must be directed to the prosecutor, in writing, within 5 days of the date of receipt of the charge sheet.
- (i) Any request for a postponement must be directed to the prosecutor, in writing, forthwith but not later than 3 days after the date of receipt of the charge sheet.
- (j) Your attention is further drawn to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), as well as the Code of Conduct contained in Schedule 2 to the Local Government: Municipal Systems Act, 2000 (Act No. 3 of 2000) which provisions will, where applicable, apply to the hearing.
- (k) Kindly note that the municipality reserves the right to amend the charges or add new charges, at any stage before you plead to the charges.
- (l) Should you require any additional information, you are welcome to contact the prosecutor _____ at _____ the following _____ contact details: _____

Thus done and signed at _____ on this ____ day of _____ 2009

Prosecutor

I confirm notification of the abovementioned disciplinary hearing and further confirm that I will attend the disciplinary hearing:

Senior Manager

Date

I hereby confirm that the abovenamed senior manager received this notification but refused to acknowledge receipt of or confirm that he or she will attend the disciplinary hearing:

Witness (if applicable)

Date

ANNEXURE F

SUMMONS TO APPEAR BEFORE A DISCIPLINARY HEARING

Name of Witness: _____

Address: _____

You are hereby summoned to appear before the presiding officer of a disciplinary hearing as a witness in respect of _____ (Name of senior manager) who has been charged with the following misconduct:

The hearing has been scheduled as follows:

Date: _____

Time: _____

Venue: _____ Municipality

During the hearing you will be required to provide evidence orally or by way of document(s), book(s), or object(s) in your possession, custody or control, which may have a bearing on the matter.

Prosecutor_____
Date

ANNEXURE G

DECISION OF DISCIPLINARY HEARING

(Copy to be handed to the senior manager and failure or refusal by the senior manager to sign this document will not affect its validity)

Date of Disciplinary Hearing _____

Name of Presiding Officer: _____

Name of Senior Manager: _____

Name of Representative (where applicable): _____

Charges:

Finding:

Sanction:

Presiding Officer

Date

Receipt of the abovementioned charge sheet acknowledged.

Senior Manager _____ Date

Witness (if applicable) _____ Date

ANNEXURE H

DECLARATION OF DISPUTE

Address: _____

I, _____ (name of senior manager) hereby appeal against the finding and/ or sanction imposed on me in terms of the Disciplinary Code and Procedures on _____ (date) at _____ (place).

I attach a copy of the final outcome of the disciplinary hearing. (THE APPEAL IS NOT VALID UNLESS ACCOMPANIED BY A COPY OF THE FINAL OUTCOME OF THE DISCIPLINARY HEARING)

My reasons for APPEAL are:

The desired outcome of the APPEAL is:

I wish/ do not wish (CHOOSE ONE) to provide additional evidence not available at the time of the disciplinary proceedings.

Senior Manager

Date